



# Adult Restitution Fines – Quick Reference Sheet

# Adult

## RESTITUTION FINES

Restitution fines are a major source of funding for the State Restitution Fund (Fund) and the Victim Compensation and Government Claims Board (VCGCB). The VCGCB uses the Fund to assist victims and their families with economic losses suffered as a direct result of a qualifying crime.

- **Misdemeanor: \$100- \$1,000** (Pen. Code, § 1202.4(b)(1).)
- **Felony: \$200 - \$10,000** (Pen. Code, § 1202.4(b)(1).)
- Inability to pay is not a compelling and extraordinary reason for waiving the fine. (Pen. Code, § 1202.4(c).)
- The fine cannot be stayed
- The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. (Pen. Code, § 1202.4(c).)
- A separate hearing for the fine is not required. (Pen. Code, § 1202.4(d).)

## DETERMINING A FINE ABOVE THE MINIMUM

To set a misdemeanor or felony fine above the minimum, the court shall consider any relevant factors including, but not limited to (Penal Code, § 1202.4 (d)):

- Number of victims
- Seriousness and gravity of the offense
- Circumstances of its commission
- Economic gain derived by the defendant as a result of the crime
- Extent to which any other person suffered losses
- Pecuniary losses to the victim or his/her dependents
- Psychological harm to the victim or his/her dependents
- Defendant's inability to pay
- Defendant's future earning capacity

Defendant is presumed to be able to pay above the minimum restitution fine and the statute expressly places the burden on a defendant to prove lack of ability. (*People v. Romero* (1996) 43 Cal.App.4th 440, 449.)

A felony fine above the minimum MAY be determined by using the following formula: \$200 x years sentenced x felony counts (of which the defendant is convicted, \$10,000 maximum). (Pen. Code § 1202.4(b)(2))

## CIVIL JUDGMENT

**Restitution fines and orders are enforceable as if they were civil judgments.** (Pen. Code, § 1214(a) & (b).)

## DEFENDANT'S STATEMENT OF ASSETS

The defendant must file a statement of assets (Form CR 115) with the clerk no later than the defendant's sentencing date, unless otherwise directed by the court. (Pen. Code, § 1202.4(f)(5)-(10).)

The defendant must file an updated financial statement with the clerk if there is an unpaid balance on a restitution order or fine 120 days prior to release from probation. (Pen. Code, § 1202.4(f)(11).)

## PROBATION REVOCATION RESTITUTION FINE

A trial court shall impose a probation revocation restitution fine equal to the restitution fine whenever a sentence includes a period of probation. The probation revocation restitution fine shall be suspended unless probation is revoked. (Pen. Code, § 1202.44.)

## PAROLE REVOCATION RESTITUTION FINE

A trial court shall impose a parole revocation restitution fine equal to the restitution fine whenever a sentence includes a period of parole. The parole revocation restitution fine shall be suspended unless parole is revoked. (Pen. Code, § 1202.45.)

## INCOME DEDUCTION ORDER

Restitution orders to victims require an order (Form CR-119) for income deduction on determination of defendant's ability to pay. The defendant bears the burden to show inability to pay. (Pen. Code, § 1202.42.)

## MANDATORY DIVERSION FEE/DEFERRED ENTRY OF JUDGMENT

\$100 - \$1,000 (Pen. Code, § 1001.90(b) and (i).)

Diversion also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with section 1000) of the Penal Code. Exception: Persons whose cases are diverted pursuant to Chapter 2.8 (commencing with section 1001.20) of the Penal Code.

## CHILD ABUSE/MOLEST FINE

Additional restitution fines specifically for child abuse/molest crimes. Fine not to exceed \$1,000 for misdemeanor conviction and \$5,000 for felony conviction. Court must consider the defendant's ability to pay. The funds from this fine are deposited in the Restitution Fund and transferred to the county children's trust fund for the purposes of child abuse prevention. (Pen. Code, § 294.)



# Adult Restitution Orders – Quick Reference Sheet

# Adult

## RESTITUTION ORDERS

The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall not be a compelling and extraordinary reason. (*Pen. Code, § 1202.4(f) and (g).*)

Victim restitution is mandated by both the Constitution and Penal Code section 1202.4.

The trial court retains discretion in fixing the amount of the restitution award. A sentence is invalid if the court fails to address restitution. (*People v. Rowland (1997) 51 Cal. App.4th 1745, 1751.*)

## WHO CAN RECEIVE RESTITUTION

- The victim - (*People v. Birkett (1999) 21 Cal.4th 226, 232.*)
- Victim's family, derivative victim, business entities and government (*Pen. Code, § 1202.4(k).*)
- Restitution Fund/Victim Compensation and Government Claims Board (*Pen. Code, § 1202.4(f)(4)(A).*)
- Insurance companies – as direct victims only *People v. Birkett, supra.*

Restitution includes, but is not limited to:

Value of stolen or damaged property, medical expenses, mental health expenses, lost wages or profits interest, relocation expenses, security expenses, non-economic losses for felony violations of *Penal Code, § 288*, retrofit expenses for a residence or vehicle, reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim, funeral/burial expenses, dental expenses, rehabilitation expenses, and support loss. (*Pen. Code, § 1202.4(f).*)

The court has broad discretion to order restitution as a condition of probation consistent with the ends of fostering rehabilitation and protecting public safety. (*Pen. Code, § 1203.1(j).*)

## BURDEN OF PROOF

The defendant has the burden of proof to show that the restitution recommendations in the probation report or the victim's estimates are inaccurate. The standard of proof for determining the amount of restitution is "preponderance of the evidence." (*People v. Gemelli (2008) 161 Cal.App.4th 1539, 1542-1543.*)

## JOINT AND SEVERAL LIABILITY

The court has the authority to order direct victim restitution paid by all defendants jointly and severally. (*People v. Blackburn (1999) 72 Cal.App.4th 1520, 1535.*)

## TO BE DETERMINED

If the amount of losses is unknown at the time of sentencing, the amount shall be determined at the direction of the court. (*Pen. Code, § 1202.4(f).*)

## DUE PROCESS RIGHTS AND CONFRONTATION RIGHTS

A defendant's due process rights at a restitution hearing are very limited. Due process rights are satisfied when the defendant receives notice of the amount of restitution claimed, and the defendant has an opportunity to challenge the amount. A defendant does not have the right at a restitution hearing to cross examine witnesses. (*People v. Cain (2000) 82 Cal.App.4th 81.*)

## PAYMENT BY INSURANCE COMPANIES & THIRD PARTIES

A victim is entitled to receive restitution regardless of whether the victim has been reimbursed in part or in full by insurance. (*People v. Birkett (1999) 21 Cal.4th 226.*)

The only time a defendant is entitled to an offset is when the defendant's insurance company has made a payment to the victim. (*People v. Bernal (2002) 101 Cal.App.4th 155.*)

Third-party indemnification or subrogation rights do not affect the amount of restitution that is to be ordered. (*Pen. Code, § 1202.4(f)(2).*)

## CHECKLIST

- ☐ Defendant has filed a statement of assets  
(Judicial Council Form CR-115) (*Pen. Code, § 1202.4(f)(5)-(11).*)

### Restitution Fines

- ☐ Misdemeanor \$100 - \$1,000 or Felony \$200 - \$10,000  
(Alternate fine formula: \$200 x years sentenced x felony counts)
- ☐ Probation revocation restitution fine (same amount as restitution fine) (*PC § 1202.44*)
- ☐ Parole revocation restitution fine (same amount as restitution fine) (*PC § 1202.45*)
- ☐ Diversion fee \$100 - \$1,000

### Restitution Orders

- ☐ Amount ordered to victim(s)
- ☐ Identify each victim and restitution amount
- ☐ Amount ordered to the Victim Compensation & Government Claims Board
- ☐ Amount "To Be Determined" (If amount cannot be determined, set review date)
- ☐ Income deduction (Ability to Pay) (*Pen. Code, § 1202.42.*)
- ☐ Notify victim to file a CDC Form 1707, if the defendant is sentenced to prison
- ☐ Prepare a CR-110 form for each victim and the VCGCB
- ☐ Send a copy of the completed CR-110 form or Minute Order to the VCGCB, if the restitution is in favor of the VCGCB

(Rev 02/09)